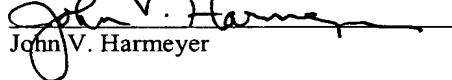


Docket No.: 3356-148

Patent

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment; Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on May 9, 2005


John V. Harmeyer

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant: Timothy M. Garrison et al. Paper No.:

Serial No.: 10/684,331 Group Art Unit: 3754

Filed: October 10, 2003 Examiner: Eric S. Keasel

For: **SPOUT ASSEMBLY FOR DISPENSING LIQUID FROM A NOZZLE**

RESPONSE TO RESTRICTION AND ELECTION REQUIREMENTS

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In the Official Action dated March 8, 2005, the Examiner required restriction under 35 USC 121 to one of the following groups specified in the Office Action:

- I. Claims 1-33 and 64-68;
- II. Claims 34-58;
- III. Claims 59-63 and 69-70;
- IV. Claims 71-73; and
- V. Claims 74-79.

Applicants respectfully traverse the requirement on the basis that the groupings are related such that the same art classifications would need to be searched for one grouping as for the other, and the same general field of search would be required. See MPEP § 808.02.

In particular, the groupings are related as all referring to a spout assembly or spout in the claim or preamble, and have elements in common regardless of additional patentable distinctions or the ability to be separately usable. Accordingly, the same general field of search would apply to the groupings and the classes/subclasses indicated would need to be searched, as they may have art pertinent to the other. For example, the classification for Group I (Class 222, subclass 566- Dispensing: Nozzles, Spouts and Pouring Devices) is related to the claims of Group II which relate to a spout assembly and are indicated as being in Class 222, subclass 491 (Dispensing: Outlet Element Operated by Pressure of Contents). Accordingly, even assuming *arguendo* that MPEP § 806.05(c) were applicable, the requirements of MPEP § 808.02 need to be met as well, and Applicants believe that they are not present in this case. In particular, there need not have been a separate classification (808.02(A)), and Applicants believe that no separate status in the art has been shown (808.02(B)) and that the same field of search should apply to both (808.02(C)). (See also MPEP § 904.02(a), stating "In outlining a field of search, the examiner should note every class and subclass under the U.S. Patent Classification system and other organized systems of literature that may have material pertinent to the subject matter as claimed.")

Moreover, Applicants respectfully submit that Applicants would be faced with an undue burden and expense if forced to file multiple divisional patent applications on the related groupings set forth in the Office Action, and that it would not be unduly burdensome to simultaneously examine all of the claims in this application.

Furthermore, the statutory mandate of 35 U.S.C. §121 requiring a finding of two or more independent and distinct inventions has not been shown in this case. In particular, 35 U.S.C. §121 states that “[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions.” Consequently, the standard for restriction requirements is that two or more

independent and distinct inventions must be present. In imposing the present requirement, the Office Action focuses only on distinctness. It is Applicant's position that absent a showing of independence, imposition of the present restriction requirement fails to comply with the requirements of 35 U.S.C. §121. Moreover, even when two or more independent and distinct inventions are found, imposition of the requirement is discretionary with the Commissioner.

Accordingly, reconsideration of the restriction requirement is requested.

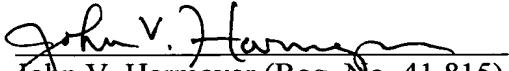
For purposes of complying with 37 C.F.R. § 1.143, Applicants hereby provisionally elect with traverse the group labeled in the Office Action as Group I, claims 1-33 and 64-68.

In the Official Action, the Examiner further required Applicants under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits to which the claims should be restricted if no generic claim is finally held to be allowable.

Applicants accordingly hereby provisionally elect the species identified as comprising FIGS. 1-21. It is believed that at least claims 1-29, 34-58, and 71-73 read on the elected species. This election of species is made without admission and with traverse on the basis that it is not unduly burdensome for the Examiner to search the invention defined by the generic claims without an election of species. Accordingly, reconsideration and withdrawal of the election of species requirement is respectfully requested.

It is believed that the above represents a complete response to the restriction and election requirements. Reconsideration and further examination on the merits are respectfully requested.

Respectfully submitted,


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